Supreme Court, U.S.
FILED

No. 93-1317 FEB 15 1994

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

DAISEY SANDERSON

Petitioner

v.

WINFIELD CARRAWAY HOSPITAL,

DR. V.R. CHANDRAN ET AL.

Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the resident doctor [student doctor in medical emergency room violated the COBRA [Consolidated Omnibus Budget Reconcilation Act] potential liability element to stabablize a patient [Daisey Sanderson] by discharging Ms. Sanderson when she had a broken hip when the student doctor misinterpreted her X-Rays and sent her home with Tylernol on December 3, 1988. However, after the staff doctor, Dr. Jordon, returned on December 5, 1988, he had the X-Rays read and sent a Winfield Carraway Hospital ambulance to pick up Ms. Sanderson who had to have immediately an operation for a hip prosthesis. Furthermore, Ms. Sanderson was again not properly medically treated because Dr. Chandran at Winfield Carraway Hospital in an operation placed the wrong-size hip prosthesis in Ms. Sanderson's body and this wrong size had to be replaced in a second operation by another orthopedic doctor with the proper hip prosthesis or Ms. Sanderson would have been a wheel chair patient or died because the

loose big and wrong size hip prosthesis was causing a deterioration of her femur bone of her leg i.e. whether Ms. Sanderson should have received the $50,000 for penalty for violation of COBRA or at least had a jury trial based of disputed facts of whether Ms. Sanderson was wrongfully sent home by hospital personnel before being treated in the emergency room for a broken hip, and before the X-Rays had been competently read to determine the true medical problem of Ms. Sanderson, and also whetehr Ms. Sanderson owed any money to the Winfield Carraway Hospital after such poor treatment of Ms. Sanderson [Note this Writ of Certiorari is a Writ for both cases known as CV 90-187 and CV 90-106 which were appealed to the highest state court, the Supreme Court of Alabama, who just affirmed with no opinion, the reason for this petition for Writ of Certiorari.

II. Whether Ms. Sanderson's due process and liberty rights under the 5th and 14th amendments to the U.S. Constitution were violated when summary

judgment was wrongfully granted when disputed facts of whether or substandard medical treatment was administered to Ms. Sanderson especially since the Winfield Carraway Hospital, resident doctor, in the Emergency Room, sent Ms. Sanderson home with no treatment for her hip which was broken and Ms. Sanderson was not treated until 2 days later but then again Ms. Sanderson did not receive proper treatment since Dr. Chandran in his operaton placed the wrong size hip prosthesis into the body of Ms. Sanderson which had to be replaced by a second operation by a orthopedic surgeon?

III. Whether Rule 53, Alabama Rules of Appellate Procedure, with Supreme Court of Alabama ruling Affirmed "No Opinion" violates the due process in the courts of Petitioner [Appellant], under the 5th and 14th Amendments of the U.S. Constitution?

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PARTIES TO THIS PROCEEDING

The Plaintiffs/Appellants/Petitioners is:

Daisey Sanderson, Hamilton, Alabama

The Defendants/Appellees/Repondents are:

Winfield Carraway Hospital, Dr. V.R. Chandran, and Chandran Clinic, Winfield, Alabama.

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

DAISEY SANDERSON

Petitioner

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WINFIELD CARRAWAY HOSPITAL,

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Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision from the Supreme Court of Alabama, the highest court in Alabama who originally denied the appeal. Jurisdiction is invoked under 28 U.S.C. § 1257 as Writ.

Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The Winfield Carraway Hospital first sued Ms. Sanderson on May 8, 1990, in CV 90-106 for the amount of $12,104.00, interest, and $4,039.67 attorney fee when the Winfield Carraway Hospital provided substandard treatment to Ms. Sanderson as seen in the facts below. CV 90-106 and CV 90-187 were consolidated in the lower court.

The Complaint of CV 90-187 was timely filed and notarized on August 13, 1990 with exhibits.

Amended Complaint was filed on January 11, 1191. Dr. Asam took the depositions of the Administrator of Winfield Carraway Hospital, Dr. Jordon, staff doctor of the Emergency Room of Winfield Carraway Hospital, Dr. V.R. Chandrin, Chandrin Clinic, and Dr. Brock. Defendants attorneys failed to take deposition of Ms. Sanderson.

Summary Judgment hearing was conducted and the actual prosthesis removed from the body of Ms. Sanderson by Dr. Brock was presented; however, the Honorable Judge failed to notice the disputed facts of whether COBRA had been violated by the Winfield Hospital, and whether Dr. Chandran had committed malpractice on Ms. Sanderson; therefore, the due process and liberty rights of Ms. Sanderson under the 5th and 14th amendments to the U.S. Constitution were violated [Issue #V in the Supreme Court of Alabama]. The elements of summary judgment were not met despite the order by the Honorable Judge which was erroneous.

STATEMENT OF THE FACTS

The instant case is a malparactice case by Dr. V.R. Chandran and a violation of COBRA by the Winfield Carraway Hospital. Ms. Daisey Sanderson presented to the Emergancy Room of the Winfield Carraway Hospital with a fractured hip but was wrongfully sent home because the resident doctor [student doctor] miniterpreted the X-Rays and Ms. Sanderson had no insurance at the time. Dr. Jordon, the expert emergency room expert staff doctor had Ms. Sanderson picked up by an ambulance to bring her form Hamilton, Alabama to Winfield Carraway Hospital where surgeryhad to be performed immediatley to implant a hip prosthesis. Dr. Chandran who performed the hip prosthesis operation placed the wrong sized hp prosthesis in Ms. Sanderson's body, and later she had to be operated on by an orthopaedic specialist, Dr. Brock from Tuscaloosa to place a different size prosthesis in her body or she would have become a wheelchair patient according to Dr. Brock.

Both Defendants Winfield Carraway Hospital, and Dr. Chandran disputed the true facts which were

documented by the medical records. The Winfield Carraway Hospital sued Ms. Sanderson, first in CV 90-106, trying to obtain hospital fees when Ms. Sanderson was malpracticed by the hospital since a resident student doctor failed to properly treat her in the emergency room and sent her home instead of admitting herinto the hospital with a broken hip.

The Supreme Court of Alabama has failed to rule according to its own laws concerning summary judgment when there are clearly disputed facts and the factss hould have been decided by a jury.

The "No opinion" ruling ignored and was inconsistent to the following cases:

Booth v. United Services Auto Association, 469 So. 1281 (Ala. 1985); Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984); Hightower & Co. v. U.S. Fidelity & Guar. 527 So. 2d 698 (Ala. 1988); Clark v. Alabama Farm Bureau Mutual Casualty Insurance Co., 465 So. 2d 1135 (Ala. Civ. App.

1984). Since Dr. Chandran merely denied liability, the following case was ignored:

Swendsen v. Gross, 530 So. 2d 764 (Ala. 1988) at 765 states, "Mere general denial of liability, without more does not entitle movant to summary judgment as matter of law." Rules Civ. Proc., Rule 56.

The laws defining "material" fact was also ignored which is found in Johnson v. Soulis, 512 F. 2d 867, (Wyoming, 1975), and Austin v. Wilder, 215 S.E. 2d 794 (N. Carolina, 1975).

Usually an issue concerning negligence is a jury issue and is to be determined by appropriate trier of fact's application of "reasonable man" standard which was also ignored by the Supreme Court of Alabama's ruling of affirmed with "No opinion."

See St. Cyr v. Greyhound Lines, Inc., 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980) states,

"Issues concerning negligence, such as observance of due care... are ordinarily not susceptible to summary adjudication."

Ms. Daisey Sanderson has had no due process in any court and is a violation of her 5th and 14th Amendments to the U.S. Constitution. See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due Process Clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

The Petitioner does not owe over $12,000.00 to a hospital who damaged her body and aggravated her broken hip condition when a resident doctor misinterpreted an X-Ray when the resident doctor failed to have a radiologist or a staff doctor to read the X-Rays, when the same doctor failed to admit Ms. Sanderosn to the Winfield Carraway Hospital when she had no insurance.

REASONS FOR WRIT OF CERTIORARI

I. The Resident doctor [student doctor in medical emergency room VIOLATED THE COBRA [Consolidated Omnibus Budget Reconcilation Act] potential liability element to stablelize a patient [Daisey Sanderson] by discharging Ms. Sanderson when she had a broken hp when the student doctor misinterpreted her X-Rays and sent her home with Tylernol on December 3, 1988. The point is the student doctor should have called the staff doctor to have the X-Rays to be properly read and/or admitted Ms. Sanderson to the hospital which he failed to do and was a violation of COBRA by intentionally discharging Ms. Sanderson from the Emergency room of the Winfield Carraway Hospital with a broken hip. After the staff doctor, Dr. Jordon, returned on December 5, 1988, he had the X-Rays read and sent an ambulance to pick up Ms. Sanderson who had to have immediatley an operation for a hip prosthesis.

See the U.S. Code citation 42 U.S.C. 1395dd. et seq. Requirement which relates to appropriate transfer of the patient and in this case has to do with discharging the patient prematurely before the X-Rays were properly read.

The enforcement provision stated "If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section" the hospital is subject to sanctions, including the termination of its member ship, in addition to exposure to civil liability.

See 42 U.S.C.S. § 1395 dd (d) Enforcement. ...(2)"Civil monetary penalties. (A) A participating hospital that knowingly violates a requirement of this section is subject to a civil money penalty of not more than $50,000 for each violation."

II. Petitioner's DUE PROCESS rights in the courts have been violated after she received permanent damage because of the lack of proper medical care by Dr. Chandran and the resident doctor [doctor

in training] at the Emergency Room of Winfield Carraway Hospital, misinterpreting the X-Rays and sending Ms. Sanderson home with a broken hip and tylernol, and when the same X-Rays were finally read by a competent radiologist then Dr. Jordon, ordered an ambulande to bring Ms. Sanderson from Hamilton, Alabama to Winfield, Alabama, when the resident doctor sent her home on December 3, 1988, and she had to be brought back in an ambulance on December 5, 1988, based on the diagnosis of acute fracture after she had been sent home since she had no insurance by the resident doctor who did not admit her into the hospital and she was not admitted until two days later in the hospital after a radiologist read the same X-Rays. Ms. Sanderson's due process rights in the court were surely shown since she received poor hospital care and poor surgery at Winfield Carraway Hospital i.e. substandard treatment.

Note: Questions Presented II and III on due process are discussed together.

BOTTOM LINE is that no due process under the 5th and 14th amendments to the U.S. Constitution have been shown in any court in this instant case.

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

Writ, showing violation of due process under 5th and 14th Amendments

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

Also see Bantam Books, Inc. v. Sullivan, R.I., 1963, 83 S Ct 631, 372 U.S. 58, 9 L. Ed 2d 584, which states,

"The Supreme Court's appellate jurisdiction was properly invoked, where the state court judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution."

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

The Supreme Court of Alabama has recently passed some type of procedural rules concerning ruling Affirmed with no opinion which further violates the due process rights in the instant case, [See attached Rule 53, Alabama Rules Appellate procedure].

The Writ of Certiorari should be granted and a merits brief allowed to be written, and then the instant case should be reversed and remanded with instructions on constitutional law to the trial court to be tried by a jury on all triable issues in the instant case.

All the law presented in this Writ is incorporated into the Reasons for this Writ.

CONCLUSION

The instant case should be reversed and remanded for a jury trial of all triable issues against all Defendants.

Because of all the disputed material facts in the instant case concerning the substandard care of Dr. Chandran and the resident doctor from the Emergency Room of the Winfield Carraway Hospital, the Honorable Judge in the trial court made reversible and gross error in granting a summary judgment for all Defendants because the elements for summary judgment were not met and granting summary judgment as a matter of law when there are disputed facts is unjust when

the Petitioner has suffered pain that she did not need to suffer because of the substandard medical treatment in which she received the wrong type and larger size hip prosthesis [Austin-Moore hip prosthesis], that required her to have to have a second operation by Dr. Brock, and orthopedic surgeon, so that she would not be a vegetable in a wheelchair or die because the first hip prosthesis was loose due to poor surgery and wrong size prosthesis.

2/14/94

Respectively submitted,
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APPENDIX I

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

DAISEY SANDERSON, CV Action No. CV-90-106

Plaintiff CV Action No. CV-90-187

vs.

WINFIELD CARRAWAY HOSPITAL,

Dr. V.R. Chandran, et al.,

Defendants

O R D E R

This cause coming on to be heard on the motion of plaintiff Daisey Sanderson for summary judgment, as amended July 7, 1992, and the separate and severable motions for summary judgment of defendants Dr. V.R. Chandran, Chandran Clinics, P.C. and Carraway Methodist Hospitals of Alabama, Inc., and those matters in support of and in opposition to, said motions, counsel for the parties appearing and arguing said motions, now upon consideration of the foregoing, the Court expressly determines that there is no just reason for delay and expressly directs the entry of this judgment, now upon consid-

eration of the foregoing, this court finds that there is no genuine issue of any material fact in defendant Carraway's motion and that said defendant is entitled to judgment thereon as a matter of law, further finds that there is no genuine issue as to any material fact in the defendants' motions for summary judgment and that said defendants are entitled to judgment as a matter of law, and further finds that the above findings preclude summary judgment for plaintiff, now upon consideration of the foregoing, it is ORDERED AND ADJUDGED as follows:

1. Carraway Methodist Hospitals of Alabama, Inc. shall have and recover of Daisey Sanderson the sum of Twelve thousand one hundred four dollars ($12,104), together with the costs of this cause for which if not paid, let execution issue according to law. [This is sad judgment since Ms. Sanderson was made an indigent because of the abuse on her body with the first operation with the big wrong size hip prosthesis].

2. Daisey Sanderson shall not have and recover of defendants Dr. V.R. Chandran, Chandran Clinics, P.C. and Carraway Methodist Hospitals of Alabama, Inc. and they are discharged herein.

3. The court has considered the pleadings and those matters stated in its order setting the motions for summary judgment for hearing on July 7, 1992 AND ONLY THOSE MATTERS, the court not considering entire depositions but only the excerpts.

4. The motion to strike of Carraway is denied, this Court considering that the proper way, in all the Circuits this Court is aware of, of presenting excerpts from depositions is by affidavit, this hearing being held before the August 1, 1992, amendment to A.R.C.P. (which argably has changed this practice).

5. The October 1992 trial date of th ese cases is cancelled. Done this 9th day of October, 1992.

s/Carlton Mayhall, Jr.

Circuit Judge

APPENDIX II

STATE OF ALABAMA -- JUDICIAL DEPARTMENT

THE SUPREME COURT

OCTOBER TERM, 1993-94

1920824 and 1920825

Daisey Sanderson v. Winfield Carraway Hospital, et al.

Appeals from Marion Circuit Court (CV-90-187 and CV 90-106)

MADDOX, JUSTICE.

AFFIRMED. NO OPINION.

See rule 53(a)(1) and (a)(2)(E), Ala.R.App.P.

Hornsby, C.J., and Shores, Houston, and Kennedy, JJ., concur.

October 15, 1993

APPENDIX III

IN TUE SUPREME COURT OF ALABAMA

November 19, 1993

1920824

Daisey Sanderson v. Winfield Carraway Hospital, et al. (Marion: CV 90-187)

1920825

Daisey Sanderson v. Winfield Carraway Hospital, Inc. [Mistake by Supreme Court of Alabama] Case is styled Winfield Carraway Hospital, Inc. v. Daisey Sanderson] (Marion: CV-90-106)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

MADDOX, J. -Hornsby, CJ, Shores, Houston and Kennedy, JJ., concur.

APPENDIX IV

RULE 53. OPINIONS AND "No OPINION" CASES OF THE SUPREME COURT AND THE COURT OF CIVIL APPEALS

(a) Affirmance Without Opinion. The Supreme Court of the Court of Civil Appeals may affirm a judgment or order of a trial court without an opinion if court determines.

(1) That an opinion in the case would serve no significant precedential purpose; and

(2) That one of the following circumstances exists:

(A) The judgment or order appealed from is based on findings of fact that are not clearly, plainly, or palpably erroneous.

(B) The evidence adequately supports the jury verdict on which the judgment or order is based;

(C) In a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings of that would have been necessary to support the judgment or order;

(D) The order of an administrative agency is sufficiently supported by the evidence in the record;

(E) The appeal is from a summary judgment, a judgment on the pleadings, or a judgment based on a directed verdict, and judgment is supported by the record; or

(F) The court, after a review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Writ for Certiorari was sent to Mr. Braxton W. Ashe, P.O. Box 899, Tuscumbia, AL 35674, Mr. Crawford McGiveran, P.O. Box 830612, Birmingham, Ala. 35283, and Mr. James L. Kessler, 529 Frank Nelson Bldg., Birmingham, Ala. 35203 this 14 day of February 1994.

Julia Asam

the

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Supreme Court, U.S.
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OCTOBER TERM, 1993

DAISEY SANDERSON,
Petitioner,

VS.

CARRAWAY METHODIST HOSPITALS OF ALABAMA, INC., D.B.A. CARRAWAY NORTHWEST MEDICAL CENTER, DR. V. R. CHANDRAN, AND CHANDRAN CLINICS, P.C.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

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VS.

CARRAWAY METHODIST HOSPITALS OF ALABAMA, INC., D.B.A. CARRAWAY NORTHWEST MEDICAL CENTER, DR. V.R. CHANDRAN, AND CHANDRAN CLINICS, P.C.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

OPINIONS BELOW

The opinion of the Circuit Court for Marion County, Alabama, is set forth in the Appendix on pages A-1 -- A-2. The decision of the Supreme Court of Alabama is set forth in the Appendix on page A-3.

STATEMENT OF THE CASE

The petitioner's statement of the case is so confusing and convoluted that respondent will restate the case.

This petition arises out of two lawsuits[1] brought in the Circuit Court of Marion County, Alabama, the first of which was filed by respondent Carraway Methodist Hospitals of Alabama, Inc., d.b.a. Carraway Northwest Medical Center[2] (hereinafter sometimes "Winfield Carraway" or "the hospital"), in an attempt to collect a hospital bill incurred by petitioner, Mrs. Daisey Sanderson. Mrs. Sanderson was hospitalized at Winfield Carraway from December 5 through December 14, 1988, for hip replacement surgery, which was performed by V. R. Chandran, M.D., on December 6, 1988.

After Winfield Carraway sued to collect the hospital bill, Mrs. Sanderson filed a medical malpractice lawsuit against the hospital, Dr. Chandran and Chandran Clinics, P.C. Therein petitioner alleged that the hospital had violated certain provisions of 42 U.S.C.S. § 1395dd, the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), by discharging Mrs. Sanderson when she was unstable or because she was uninsured; that the hospital had committed malpractice by negligently misinterpreting an x-ray of Mrs. Sanderson's hip; and that Dr. V. R. Chandran and Chandran Clinics, P. C., were negligent in the way they replaced Mrs. Sanderson's fractured hip with a prosthesis.

On August 28, 1991, petitioner filed a motion for summary judgment. A-5. On September 19, 1991, respondents Dr. V. R. Chandran and Chandran Clinics, P.C., filed a motion for summary judgment. A-18. On June 8, 1992, respondent Winfield Carraway filed a motion for summary judgment. A-25. The parties' motions were set for hearing on July 7, 1992. The Court

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[1] Civil Action Nos. CV 90-106 and CV 90-187 were consolidated for discovery and trial.

[2] Respondent is referred to in the record below as Winfield Carraway Hospital. Since the Alabama Supreme Court denied the petitioner's petition for re-hearing, respondent's name has been changed to Carraway Northwest Medical Center.

heard oral argument, took the motions under consideration, considered the briefs, affidavits, depositions, and other materials submitted by the parties, and on October 9, 1992, entered an order granting summary judgment in favor of the hospital on its claim against Mrs. Sanderson and on her claim against it, and in favor of Dr. Chandran and Chandran Clinics and against the petitioner on her claims against them. A-1. On November 6, 1992, petitioner filed a Motion to Alter, Amend or Vacate the trial court's order, which was never ruled upon. Therefore, her motion was considered denied pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.

Thereafter, on February 26, 1993, the petitioner appealed to the Alabama Supreme Court. On October 15, 1993, the Alabama Supreme Court affirmed the trial court's ruling without opinion in accordance with Rule 53(a)(1) and (a)(2)(E) of the Alabama Rules of Appellate Procedure. A-41. Apparently, petitioner filed a petition for re-hearing[3], which was denied on November 19, 1993. This petition for writ of certiorari followed.

REASONS THE WRIT SHOULD BE DENIED

It could not be more clear that the petition for writ of certiorari is due to be denied.

The lawsuits underlying this petition are garden variety collection and medical malpractice cases involving the application of Alabama law by Alabama courts. The only question of federal law in the original medical malpractice case filed by petitioner was an allegation that the hospital had violated certain provisions of 42 U.S.C.S. § 1395dd, the Consolidated Omnibus

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[3] None of the respondents were ever served a copy of petitioner's re-hearing petition, and they learned of it only when they were delivered the Supreme Court's order denying re-hearing.

Budget Reconciliation Act ("COBRA"), by allegedly discharging Mrs. Sanderson when she was unstable or because she was uninsured. This claim was wholly unsupported by any evidence in the case as was determined at both the trial and appellate levels.

There is no special or important reason which would justify the granting of petitioner's petition for a writ of certiorari, as suggested by Rule 10 of the Rules of the Supreme Court of the United States or otherwise. In fact, although petitioner designates a portion of her petition as "Reasons for Writ of Certiorari," she does not therein suggest *any* reason which would recommend this case to this Court for consideration, much less any special or important one. Only the parties to this litigation are in any wise affected by the state court rulings below.

With a complete absence of both clarity and reason, petitioner suggests that this Court should review the Alabama Supreme Court's affirmation of an Alabama Circuit Court's interpretation of Alabama law, a practice which this Court has steadfastly refused to do. *International Longshoremen's Ass'n, AFL-CIO v. Davis*, 476 U.S. 380, 387, 106 S.Ct. 1904, 90 L. Ed. 2d 389, 398 (1986). This Court has consistently held that state courts are presumed competent to interpret their own state's laws. *Kremer v. Chemical Const. Corp.*, 456 U.S. 461, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982). In her petition, petitioner writes, "The Supreme Court of Alabama has failed to rule according to its own laws concerning summary judgment...," then cites a string of cases which do not support that proposition at all.

First, petitioner asserts that the grant of summary judgment by the trial court where there were disputed issues of material fact violates her due process. The point is, as the record below shows clearly, there were no disputed issues of fact. Under Alabama

law, petitioner had to show by substantial, competent medical expert testimony that there had been a breach of the standard of care which caused the petitioner's injuries. *Ala. Code* §§ 6-5-548, 6-5-549, 12-21-12 (1975); Rule 56 of the Alabama Rules of Civil Procedure; *Coleman v. Bessemer Carraway Medical Center*, 589 So. 2d 703 (Ala. 1991); *Swendson v. Gross*, 530 So. 2d 764 (Ala. 1988); *Dobbs v. Smith*, 514 So. 2d 871 (Ala. 1987). Petitioner wholly failed to offer any evidence, much less expert medical testimony, regarding the standard of care or any breach thereof by the respondents.

Moreover, respondents established that they were entitled to summary judgment, presenting to the trial court the affidavits of Mr. Chuck Spann, Dr. Mark Ricketts and Dr. V. R. Chandran in support of their motions, which attested that none of the respondents breached the standard of care, and that the hospital was entitled to recover its bill from petitioner. A-20, A-35, A-38.

The burden of proof then shifted to the petitioner to present substantial evidence in rebuttal to respondents' motions. *Poole v. Henderson, Black and Greene*, 584 So. 2d 485, 486 (Ala. 1991); *Betts v. McDonald's Corp.*, 567 So. 2d 1252 (Ala. 1990); Ala. Code § 6-5-484 (1975); §§ 6-5-548, 6-5-549 (1987). Petitioner failed to do so, and summary judgment was properly entered in favor of the respondents and affirmed on appeal.

Next, petitioner suggests that her due process was violated because the trial court "failed to notice the disputed facts of whether COBRA had been violated." She does not suggest that the trial court misinterpreted what was required to be established to prove a violation under COBRA; she simply states that it failed to notice some facts.

In so suggesting, petitioner gravely misrepresents what evidence was before the trial court. A-25, A-27, A-35, A-38 . The facts and issues petitioner says the trial court "failed to notice"

were argued and briefed on respondent Winfield Carraway's summary judgment motion, and were considered by the trial judge when he entered summary judgment in favor of the respondents. A-1.

In all of this, petitioner is, in essence, disguising a request for this Court to review the findings of fact of the trial court in a cloak of due process claims. This Court is loathe to review a state court's findings of fact absent exceptional circumstances, not present in this petition. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 111, 100 S.Ct. 937, 63 L.Ed.2d 233, 247 (1980).

Moreover, due process guarantees that an aggrieved party is given the opportunity to present her case and have its merits fairly judged. *Jackson Water Works, Inc. v. Public Utilities Commission of the State of California*, 793 F.2d 1090, cert. denied 479 U.S. 1102, 107 S.Ct. 1334, 94 L.Ed. 2d 184 (9th Cir. 1986). Not only was petitioner given more than an adequate opportunity to present her case at the trial level, she was also heard on appeal. While the petitioner may be dissatisfied with the results in the cases, she was not denied due process.

Petitioner finally asserts that the Alabama Supreme Court violated her due process rights when it affirmed the trial court's order on summary judgment without opinion. She claims that Rule 53 of the Alabama Rules of Appellate Procedure[4], which allows the Court to affirm a trial court order on summary judgment without written opinion where the opinion would serve no significant precedential purpose and where the judgment is supported by the record, is unconstitutional. While this is a novel challenge, it is baseless and not worthy of this Court's time and consideration. Respondents have been unable to find

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[4] Rule 53 is set out in full in the Appendix at page A-41.

any legal authority for the proposition that petitioner has a right to a written opinion from the Alabama Supreme Court. There is certainly no such authority in the cases cited in petitioner's brief. Moreover, petitioner has not suggested that she has any due process interest which was denied her by reason of the Alabama Supreme Court refusing to write an opinion outlining the obvious reasons it chose to affirm the trial court. It is apparent from the petition that petitioner is merely unhappy with the Alabama courts' interpretation of Alabama law and seeks a different interpretation from this Court.

CONCLUSION

There is no important or special reason for this Court to grant petitioner's Petition for a Writ of Certiorari. It is due to be denied.

Respectfully submitted,

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* Counsel of Record

APPENDIX

IN THE CIRCUIT COURT OF
MARION COUNTY, ALABAMA

CIVIL ACTION NO. CV-90-106
CIVIL ACTION NO. CV-90-187

DAISEY SANDERSON,
Plaintiff,
v.
DR. V. R. CHANDRAN, et. al.,
Defendants.

This cause coming on to be heard on the motion of plaintiff Daisey Sanderson for summary judgment, as amended July 7, 1992, and the separate and several motions for summary judgment of defendants Dr. V. R. Chandran, Chandran Clinics, P. C. and Carraway Methodist Hospitals of Alabama, Inc., and those matters in support of and in opposition to, said motions, counsel for the parties appearing and arguing said motions, now upon consideration of the foregoing, the Court expressly determines that there is no just reason for delay and expressly directs the entry of this judgment, now upon consideration of the foregoing, this court finds that there is no genuine issue of any material fact in defendant Carraway's motion and that said defendant is entitled to judgment thereon as a matter of law, further finds that there is no genuine issue as to any material fact in the defendants' motions for summary judgment and that said defendants are entitled to judgment as a matter of law, and further finds that the above findings preclude summary judgment for plaintiff, now upon consideration of the foregoing, it is ORDERED AND ADJUDGED as follows:

1. Carraway Methodist Hospitals of Alabama, Inc. shall have and recover of Daisey Sanderson the sum of Twelve thousand

one hundred four dollars ($12,104), together with the costs of this cause for which if not paid, let execution issue according to law.

2. Daisey Sanderson shall not have and recover of defendants Dr. V. R. Chandran, Chandran Clinics, P. C. and Carraway Methodist Hospitals of Alabama, Inc. and they are discharged herein.

3. The court has considered the pleadings and those matters stated in its order setting the motions for summary judgment for hearing on July 7, 1992 AND ONLY THOSE MATTERS, the court not considering entire depositions but only the excerpts.

4. The motion to strike of Carraway is denied, this Court considering that the proper way, in all the Circuits this Court is aware of, of presenting excerpts from depositions is by affidavit, this hearing being held before the August 1, 1992 amendment to A.R.C.P. (which arguably has changed this practice).

5. The October 1992 trial date of these cases is cancelled.

Done this 9th day of October, 1992.

/s/ Carlton Mayhall, Jr.
Circuit Judge

Filed
Oct 09 1992
James O. Garrard
Circuit Clerk, Marion County
Hamilton, Alabama 35570

RELEASED
OCT 15 1993
CLERK

SUPREME COURT OF ALABAMA
STATE OF ALABAMA — JUDICIAL DEPARTMENT
THE SUPREME COURT
OCTOBER TERM, 1993-94

1920824 and 1920825

Daisey Sanderson v. Winfield Carraway Hospital, et. al.

Appeals from Marion Circuit Court (CV-90-187 and CV-90-106)

MADDOX, JUSTICE.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(E), Ala.R.App.P.

Hornsby, C.J., and Shores, Houston, and Kennedy, JJ., concur.

IN THE SUPREME COURT OF ALABAMA
November 19, 1993

1920824

Daisey Sanderson v. Winfield Carraway Hospital, et. al.

(Marion: CV-90-187)

1920825

Daisey Sanderson v. Winfield Carraway Hospital, Inc.

(Marion: CV-90-106)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

MADDOX, J. - Hornsby, CJ., Shores, Houston and Kennedy, JJ., concur.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19 day of Nov. 1993
/s/ Robert G. Esdale
Clerk, Supreme Court of Alabama

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

CIVIL ACTION NO. CV 90-187

DAISEY SANDERSON
Plaintiff,
vs.
THE WINFIELD CARRAWAY HOSPITAL, INC., ET AL.,
Defendants.

MOTION FOR SUMMARY JUDGMENT AGAINST ALL DEFENDANTS BASED ON DEPOSITIONS FILED IN COURT AND ATTACHED EXHIBITS

Comes now the Plaintiff and files this "Motion for Summary Judgment Against All Defendants Based on Depositions Filed in Court and Attached Exhibits.

The following depositions have been taken by the Plaintiff's attorney:

Dr. Timothy Jordan, Emergency Room doctor of Winfield Carraway Hospital.

Mr. Don Hatcher, Administrator, Winfield Carraway Hospital.

Dr. V. R. Chandran as doctor, and Dr. V. R. Chandran, as president Chandran Clinic.

Ms. Phyllis Jamorski, daughter of Ms. Daisey Sanderson, who brought the Hip Prosthesis that was removed from Ms. Sanderson by Dr. Brock.

No depositions have been taken by any Defendants. Mr. Ashe had set Ms. Sanderson's deposition to follow the next day after

Plaintiff took depositions but cancelled. The Defendants are unnecessarily delaying this instant case by not taking their depositions. The defendants have not taken the deposition of the expert witness, Dr. Brock for Plaintiffs and was the doctor who removed the wrong size hip prosthesis and put the correct hip prosthesis in her requiring a second operation.

There are no genuine material issues to try as seen in the depositions taken by the Plaintiff, and as a matter of law the Plaintiff should be granted a summary judgment in her favor, and the Defendants owe the maximum amount allowable for mal-practice, and the hospital defendant owes the $50,000 penalty for wrongfully sending the patient/plaintiff home without treatment and had to send a hospital ambulance to have her picked up because of misinterporetation[sic] of X-Rays, and did not admit her into the hospital when she had a fractured hip. See Complaint and Amended Complaint for all issues.

The Plaintiff is also going to file a separate paper showing references to the depositions indicating why this Motion for Summary Judgment Against All Defendants should be granted.

At least maybe the Defendants will take their depositions. Otherwise, the Plaintiff if this Motion. . . is not granted is ready to go to trial with or without any depositions taken by the defendants, and the expert witness for the Plaintiff can testify without any deposition taken by defendats.[sic]

Respectively submitted,

/s/ Julia Asam
Julia Asam, Attorney at Law
Suite 10, North View Plaza
3120 McFarland Blvd.
Northport, Alabama 35476
205-333-1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THE ABOVE Motion for Summary Judgment . . . was hand-delivered to all counsels of record this 26 day of August 1991.

/s/ Julia Asam

STATE OF MISSISSIPPI
COUNTY OF LAFAYETTE
AFFIDAVIT

I, Julia McCain Lampkin Asam, do personally know that I took the depositions of the following named in depositions and I do know personally that the excerpts and exhibits were true and correct from the depositions that are filed in this Honorable Court. Reference has been made to depositions to support Motion for Summary Judgment Against All Defendants.

See Exhibit 1, of the Dr. Jordon deposition, and note Dr. Jordon in his progress notes stated,

"X-Rays were done but "misinterpreted" as old fx R hip." In the deposition p. 9 of Dr. Jordon, lines 9-14, Dr. Jordon stated,

> ". . . It was later read by the radiologist as an acute fracture. I believe we called Ms. Sanderson back on the 5th of December and sent an ambulance to her house and had her return to the hospital."

Plaintiff exhibit 2 are the medical records of Daisey Sanderson, and a bound copy of these medical records are filed in this Honorable Court. [Plaintiff exhibit 2, p. 15, lines 8-12].

Ms. Sanderson was not re-X-rayed when she was brought back to the hospital on December 5, 1988 — see 13-15.

"Q. But you already had x-rays from December the 3rd; is

that correct."

A. That's correct."

Plaintiff Exhibit 3 are X-rays of Daisey Sanderson #17365 dated December 3, 1988. [Dr. Jordon, p. 17, X-Rays, Dec. 3, 1988, 1.20-23]. Plaintiff Exhibit 4, X-ray taken December 6, 1988 of Ms. Sanderson, p. 20, lines 17-23.

Exhibit 5, X-Rays taken after hip prosthesis operation, and were taken on Jan. 21, 1989, shows hip prothesis, p. 21, line 7.

Plaintiff 6 of Dr. Jordon's deposition is entitled "Private Attending Physician Policy" and is attached to Dr. Jordon's deposition as shown on p. 23, lines 20-23.

Plaintiff's Exhibit 7, is "Winfield Carraway Hospital Emergency Room Policies", Dr. Jordon's deposition p. 26, lines 2-8; p. 28, lines 3-5.

Dr. Jordon admits his hand writing, p. 32 which states, lines 3-7,

> Q. "What I'm saying, is this your handwriting where it says "but misinterpreted as an old fracture of the right hip."
>
> A. Yes, that's my writing."

See Dr. Jordon deposition, p. 35, lines 18-21,

> "Do you know the name of the radiologist that made the misinterpretation? Or was that a radiologist that made the interpretation?

. . .

p. 36, lines 1-3,

> "A Dr. Ricketts, who originally saw the patieint,[sic] read

the x-rays. He is not a radiologist."

See Dr. Jordon deposition p. 46, lines 17-23,

> Q. "But I'm trying to tell you — I'm asking if the person was unable because she's living by herself — if a person did walk with a hip that was fractured, would that aggravate the situation medically?

. . .

See p. 47, lines 3-6,

> A. "If a patieint [sic] walks after having hip fracture, it is possible that the fracture could shieft [sic] and some harm could be done, yes."

See p. 49, lines 15-17, Exhibit 8, for ambulance report of Ms. Sanderson; also, lines 20-22, p. 49.

On p. 50, lines 14-16, Dr. Jordon read from Plaintiff's Exhibit 8, which states,

> "Radiologist read fracture of the right hip on X-ray, dispatch to bring patieint[sic] to Winfield Carraway Hospital."

> Dr. Jordon states p. 56 his signature on Emergency Room record, lines 19-22.

> In the medical records, Exhibit 2, is the original emergency room record signed by Dr. Richetts.[sic]

See Dr. Jordon's deposition p. 60, lines 19-22 that Dr. Ricketss [sic] . . . "was a resident in training." - lines 21-22, p. 60.

[Note: a resident in training, Dr. Ricketts was the one, an agent of hospital, since on the medical staff [p. 60, lines 19-20] of the hospital that misinterpreted the X-Rays. [p. 36, lines 1-3, of Dr.

Jordon's deposition].

From the Deposition of Winfield Carraway Hospital showing the substandard reading of X-rays which were misinterpreted [Exhibit 1, to Dr. Jordon deposition] and the said X-rays were misinterpreted by the resident doctor, Dr. Ricketts, instead of by a radiologist.

See Mr. Don Hatcher's deposition, p. 49, lines 2-10, which state [Mr. Hatcher is administrator of Winfield Carraway Hospital],

> "Q. On December the 3rd, 1988, according to what Dr. Jordon was saying that Dr. Ricketts was a resident M.D., would you ordinarily have a resident M.D.'s to read X-rays instead of radiologists?
>
> A. That's the standard of practice in the community, yes, ma'am.
>
> Q. You're saying it's the standard of practice in this community —
>
> A. Yes, ma'am.
>
> Q. — at Winfield Carraway Hospital?
>
> A. Yes."

Clearly, having doctors in training as resident M.D.'s is not the standard of practice to read X-Rays. Only radiologists are qualified to read X-Rays, especially in an emergency room.

From the Depositions of Phyllis Jarmorski p. 6 and 7 as follows as to to where the prosthesis removed from Ms. Daisey Sanderson has been.

"By Ms. Asam:

> Q. First of all, tell me your relationship to the plaintiff. Is

Ms. Daisy [sic] Sanderson yoru [sic] mother?

A. Yes.

Q. Can you tell me where this prosthesis was given to your mother and to you?

A. It was given to her at West Alabama Hospital in Tuscaloosa, Alabama

Q. By who?

A. By Dr. Brock, Dr. Ernest Brock. And she then gave it to me to keep.

Q. Okay.

A. And I've had it in my possession.

Q. Unitl [sic] you walked in this door; is that correct?

A. Until I walked in the door.

Q. As of today's date?

A. Yes."

The Exhibit 16, is the actual hip prosthesis [Austin-Moore Proshtesis][sic] removed by Dr. Brock after the hip prosthesis, [Austin-Moore prosthesis] that Dr. Chadran originally placed in the first operation, and the said hip prosthesis came loose because the wrong size hip prosthesis. See attached from Exhibit 2, that Dr. Brock operated because of loose prothesis [sic] and stated on March 3, 1990,

> "I believe she will be a wheelchair patient is[if] we don't do something to correct the situation."

Exhibit 2 is attached to Dr. Jordon's deposition, and referred to in Dr. Chandran's deposition, and Dr. Chandran read this statement into the record.

The Winfield Carraway Hospital policy on admission is from Exhibit 14 attached to Mr. Harcher's deposition, and the second page states as follows;

> "Emergency admission to this hospital shall be based on type of service and patient emergency or accident care available. There shall be no discrimination based on race, creed, color, national orgin,[sic] sex or *ability to pay for services. When a person enters the emergency room the hospital is responsible.*" [Emphasis added.]

The point is Ms. Daisy [sic] Sanderson had no insurance as is shown on Exhibit 2, the first Emergency Room visit to the hospital, and the Winfield carraway Hospital *failed* the COBRA regulations in the stabilizing element by not admitting Ms. Sanderson to the hospital on Dec. 3, 1988; however, the resident doctor, Dr. Richetts, misinterpreted the X-Ray, when said X-rays should have been read by a radiologist, and the Emergency room was providing substandard care to Ms. Sanderson by not having a competent radiologist to read her X-Ray when she had an acute hip fracture severe enough that the hospital had to send an ambulance on Dec. 5, 1988, to pick her up in Hamilton, Alabama, and bring her to the Winfield Carraway Hospital on a stretcher by ambulance. The Winfield Carraway Hospital clearly owes the $50,000 penalty for not stablizing the patient in emergency room, Dec. 3, 1988, and not admitting her to the hospital when she had no insurance when the hospital had accepted her into the emergency room [see above quote].

From the Deposition of Dr. Chandran, clearly showing that Dr. Chandran was the doctor who first performed the hip prothesis operation which had to be corrected by Dr. Earnest Brock. See attached exhibits showing operative report of Dr. Chandran, and that an Austin-Moore hip prosthesis was placed in Ms. Daisey Sanderson on December 6, 1988. See the attached pathology record, and excerpts from Dr. Chandran's deposition. [See

Exhibit 2, Medical Records, attached first to Dr. Jordon's deposition and then used in Dr. Chandran's deposition — in separate envelope about one and one-half inches thick, and see medical records in bound copy filed in court].

See Plaintiff's #16 was marked for identification and retained and given back to Ms. Jarmoski, the daughter to Ms. Daisey Sanderson [See separate deposition of Ms. Jarmoski showing the chain of title of the hip prosthesis [Austin-Moore] removed from the body of Ms. Sanderson by Dr. E. Brock, and was the actual hip rosthesis[sic] [Austin-Moore] that Dr. Chandran placed in Ms. Sanderson on Dec. 6, 1988, and the hip prothesis became loose and caused severe pain [See Exhibit 2, Dr. Brock's operative report attached to end of this affidavit] and Dr. Brock in his report stated, "I believe she will be a wheelchair patient is [if] we don't do something to correct the situation."

Dr. Chandran, in his operative report it is called "excision of right femur head and insertion of a fenestrated Austin-Moore prosthesis, right hip. Dr. Chandran admitted to his signature p. 19, Dr. Chandran deposition, lines 16-19]. The oeprative[sic] report of Dr. Chandran, is also attached and in Exhibit 2 of the deposition.

In Dr. Chandran's deposition on p. 58, lines 19-21, he admits to modifying the operative technique.

> "During the course of my experience, my own experience, I modify the technique a little."

On p. 98, lines 11-13, Dr. Chandran stated, . . .

> . . . "and chose to use the fenestrated Austin-Moore prosthesis." . . .

On p. 98, lines 16-22, Dr. Chandran stated,

> . . . "Then I always — what I do, I open — I after I open up the prosthesis, like the prosthesis you saw this morning, I

> then put it inside the cavity of the acetabulum and do a trial fit to see whether it's really the most right size. And obvioulsy, it was the most right size, . . . "

See p. 99 of Dr. Chandran's deposition for further description of operative procedure. See exhibit 2, operative procedure that was written in 1988.

On p. 101, lines 15, questions was asked to Dr. Chandran,

> . . . "what would cause an Austin-Moore prosthesis to become loose and caue [sic] this problem, that she had to have — precipitated her having to have another operation to remove it?

The patient was told that the original prosthesis was too big [See affidavit by Ms. Jarmowski, filed in this court with the original complaint, and incorporated in this affidavit which is for summary judgment for all defendants].

On p. 102, lines 20-23, Dr. Chandran, was asked question again . . .

> "what would cause a hip prosthesis of that type to become loose in the body where you would have to have an operation or she might have been a wheelchair patient. . ."

Dr. Chandran on p. 104 states "allergic response [line 3], absorption of bone right aorund [sic] the metallic implant [lines 10-11, and "another accident" [line 15].

However according to the Jarmowski affidavit, Dr. Brock in her presence stated the reasoning for loose prosthesis that hip prosthesis was too big — like for football player.

On p. 114, lines 9-12, Dr. Chandran's deposition note he did know about the second operation to remove the original hip prosthesis which was placed in the body of Ms. Sanderson by Dr.

Chandraon. [sic] See lines which state,

> "Q. You do know she had another operation, is that correct, Ms. Daisey Sanderson?
>
> A. I believe so, yes."

Dr. Chandran on p. 116, lines 14-19, was asked to read from Dr. Brock's report in Exhibit 2, which states,

> "A. This says — the last sentence of this history and physical from AMI West Alabama Hospital, Northport, Alabama, 35076, says "I believe she will be a wheelchair patient if we don't do something to correct the situation."

See p. 120, lines 15-17, which states, from deposition Dr. Chandran,

> "Q. It says, "Total hip carried out"?
>
> A. Right. That's what —
>
> Q. That's what he did on revision. That's his operation report. For Dr. Brock's operation report, see Exhibit 2, and attached to this affidavit.

Also from the operative report of Dr. Brock, Dr. Chandran was reading in deposition, p. 121, lines 14-23, which states,

"Patient carried to surgery and a total hip carried out. A lateral incision was made down through the skin, superficial fat and fascia, deep facia. The loose hip was then easily extracted. The Patient was then cleaned up and prepared to take a size seven prosthesis. This, along with a zero head, was fit into acetabulum with a forty-nine cup. The fit was good and solid, allowed flexion, extension and abduction . . ."

There is no about it that there was a second operation to remove the loose hip prosthesis which caused severe pain to Ms. Sanderson

because the first operation was in some way not done right and in a substandard manner because none of the reasons mentioned by Dr. Chandran was the reason that the hip prosthesis was loose which in the instant case was because the wrong size prosthesis was put into the body of Ms. Sanderson by Dr. Chandran. Summary Judgment should be granted against Dr. Chandran as a matter of law.

In the second deposition on Dr. Chandran, who appeared for Chandran Clinic since he is the president.[Second deposition also filed in the court, and is a smaller deposition]. See p. 5, lines 9-10, that Dr. Chandran states,

". . . And I am the president of Chandran clinics."

To the extent that Dr. Chandran may not be covered by malpractice insurance, Chandran Clinic is liable for Dr. Chandran, causing permanent pain and suffering to Ms. Sanderson, who now has to walk with a cane. [See Exhibit 26 — exhibit attached to Dr. Chandran's deposition].

The Summary Judgment should be granted as to all defendants, who have failed to take any depositions as of the time of writing this affidavit, and have further failed to communicate when they wished to take a deposition by mail or phone.

STATE OF MISSISSIPPI
COUNTY OF LAFAYETTE
AFFIDAVIT

I, Julia McCain Lampkin Asam, do personally state that I took the above depositions which are filed in the Honorable Circuit Court of Marion County, Alabama, with the exhibits. I do personally know that the exceprts [sic] from the depositions that are quoted show that a summary judgment should be granted against all defendants.

Dated Aug. 30, 1991
/s/ Julia M. Lampkin Asam
Sworn and subscribed to me this 30 day of August 1991.
/s/ Melanie R. Smith
Notary
My Commission Expires:
9-4-94

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

DAISEY SANDERSON
Plaintiff,
v.
DR. V. R. CHANDRAN, et al.,
Defendants.
CIVIL ACTION NO.: CV90-187

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, Dr. V. R. Chandran, and moves the Court to enter, pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in this defendant's favor dismissing the action on the ground that there is no genuine issue as to any material fact and that this defendant, Dr. V. R. Chandran, is entitled to a judgment as a matter of law.

This motion is based upon the affidavit of Dr. V. R. Chandran attached hereto as Exhibit A and the pleadings in this action.

This the 18th day of September, 1991.

/s/ Braxton W. Ashe
Attorney for Defendant
Dr. V. R. Chandran
OF COUNSEL:
ALMON, MCALISTER, ASHE, BACCUS & TANNER
P. O. Box 899
Tuscumbia, Alabama 35674
(205) 383-6357

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all attorneys of record by hand-delivering each a copy of the same on this the 18th day of September, 1991.

/s/ Braxton W. Ashe

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

DAISEY SANDERSON,
Plaintiff,
v.
DR. V. R. CHANDRAN, et. al.,
Defendants.
CIVIL ACTION NO.: CV90-187

AFFIDAVIT OF DR. V. R. CHANDRAN

Before me, the undersigned notary public, personally appeared Dr. V. R. Chandran, who being known to me personally, and being first duly sworn, upon oath deposed and said as follows:

"I am Dr. V. R. Chandran; I am a medical physician licensed to practice medicine in the state of Alabama, and have been licensed in this state at all times referred to in this affidavit; I have a specialty in surgery. I have personal knowledge of the things and matters referred to in this affidavit.

I reviewed the medical records pertaining to the treatment rendered o Daisey Sanderson by myself during December 1988.

Based upon my review of the medical records pertaining to Daisey Sanderson and my general knowledge of the case and my knowledge of surgery both by training and experience, it is my professional opinion that I was not negligent in my treatment of Daisey Sanderson and that I met the standard of care I owed to her and exercised that degree of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice as myself ordinarily have and exercise in a like case in my treatment of Daisey Sanderson on the occasion made the basis of this lawsuit.

It is further my professional opinion that Chandran Clinics, P. C. did not breach the standard of care it owed to Daisey Sanderson on the occasion of the accident made the basis of this action.

/s/ V. R. Chandran,
V.R. Chandran, M.D.
Sworn to and subscribed before me on this the 18th day of September, 1991.
/s/Braxton W. Ashe
Notary
My Commission Expires:
10-1-93

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

CIVIL ACTION NO. : CV 90-187
DAISEY SANDERSON
Plaintiff,
v.
DR. V. R. CHANDRAN, et al.,
Defendants.

MEMORANDUM OF LAW ON REQUIREMENT OF PLAINTIFF TO HAVE EXPERT TESTIMONY TO ESTABLISH NEGLIGENCE IN MEDICAL MALPRACTICE ACTION

Ordinarily, in medical malpractice cases, proof as to what is or is not proper practice, treatment and procedure can be established only by expert medical evidence. *Holt v. Godsil*, 447 So.2d 191 (Ala. 1984); *Bradford v. McGee*, 534 So.2d 1076 (Ala. 1988); *Tuscaloosa Orthopedic Appliance Company v. Wyatt*, 460 So.2d 156 (Ala. 1984); *Carraway v. Graham*, 218 Ala. 453, 118 So. 807 (Ala. 1928); also see *McElroy* on evidence 305.01.

This is a medical malpractice action dealing with whether or not Dr. V. R. Chandran or V. R. Chandran Clinic, P. C. breached the standard of care in the way Dr. V. R. Chandran performed a hip arthroplasty by inserting a partial hip prosthesis. This is a very technical area of medicine involving selecting the prosthetic device and how such a device is implanted into a patient. This is not information which is known to lay people, but requires expert testimony. The claims against Dr. Chandran and Chandran Clinic requires expert testimony in order to establish whether there has been a breach of the applicable standard of care on the part of either of these defendants.

In a motion for summary judgment filed by a defendant in a medical malpractice action, the motion must be supported by an affidavit by an expert witness to establish that there has not been a breach of the applicable standard of care. The defendant physician is considered an expert in his field, and he may submit an affidavit of himself in support of the motion. In this case, Dr. V. R. Chandran is an expert witness, and has signed an affidavit which has been filed in support of motions for summary judgment filed by Dr. V. R. Chandran and by Chandran Clinic, P. C.

There is no expert affidavit or testimony in this action which states that Dr. V. R. Chandran or Chandran Clinic, P. C. breached the applicable standard of care owed to plaintiff in this action.

For the foregoing reasons, the motions for summary judgment of Dr. V. R. Chandran and Chandran Clinic, P. C. are due to be granted.

Plaintiff also named Winfield Carraway Hospital as a defendant. the attorney representing Dr. Chandran and Chandran Clinic is not writing to the position of Winfield Hospital.

/s/ Braxton W. Ashe
Attorney for Defendants
Dr. V. R. Chandran and
Chandran Clinic, P. C.
OF COUNSEL:
ALMON, McALISTER, ASHE,
BACCUS & TANNER
P. O. Box 899
Tuscumbia, Alabama 35674
(205) 383-6357

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all attorneys of record by hand delivering each a copy of the same on this the 6th day of October, 1992.

/s/ Braxton W. Ashe

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

CIVIL ACTION NO.
CV90-187

CIVIL ACTION NO.
CV90-106

MOTION FOR SUMMARY JUDGMENT

COMES NOW Carraway Methodist Hospitals of Alabama, Inc., d.b.a. Winfield Carraway Hospital, plaintiff in CV 90-106 and defendant in CV 90-187, (hereinafter "defendant") and moves the Court to enter, pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a final judgment on behalf of this defendant on the claims against it by the plaintiff in the above-styled actions, and on its behalf on its claims against the plaintiff in the above-styled actions, on the grounds that there are no genuine issues of material fact in these cases, this defendant is entitled to judgment as a matter of law, and there is no just reason for delay.

This motion is based upon the pleadings in these cases, the affidavits of Dr. Mark Ricketts, M. D. and Mr. Chuck Spann; the deposition testimony of Mr. Don Hatcher, Administrator of Winfield Carraway Hospital, and Dr. Timothy Jordon, M.D.; and the memorandum of law submitted herewith.

/s/ Crawford S. McGivaren, Jr.
Melanie F. Merkle
OF COUNSEL:
CABANISS, JOHNSTON,
GARDNER, DUMAS & O'NEAL
AmSouth-Sonat Tower, Ste 1700
1900 Fifth Avenue, North
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(205) 252-8800
OF COUNSEL:
4233 Wilderness Road
Birmingham, Alabama 35213
(205) 870-4921
/s/ Sara A. McGivaren
Attorneys for Defendant,
Carraway Methodist
Hospitals of Alabama, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion for Summary Judgment has been duly served upon Ms. Julia McCain Lampkin Asam, Post Office Box 591, Suite 10, North View Plaza, 3120 McFarland Boulevard North, Northport, Alabama 35476, attorney of record for the plaintiff, Mr. Braxton Ashe of Almon, McAlister, Ashe, Baccus &Tanner, Post Office Box 899, Tuscumbia, Alabama 35674, and Mr. William S. Halsey, III, of Holt, Cooper & Upshaw, 529 Frank Nelson Building, 205 20th Street North, Birmingham, Alabama 35203 by depositing the same in the United States mail, postage prepaid and properly addressed this the 5th day of June, 1992.

/s/ Melanie F. Merkle
Of Counsel

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

CIVIL ACTION NO. CV 90-187

CIVIL ACTION NO.
CV 90-106

DAISEY SANDERSON,
Plaintiff,
vs.
THE WINFIELD CARRAWAY HOSPITAL, INC., et al.,
Defendants.
and
WINFIELD CARRAWAY HOSPITAL,
Plaintiff,
vs.
DAISEY SANDERSON,
Defendant.

MEMORANDUM IN SUPPORT of MOTION FOR SUMMARY JUDGMENT

This memorandum of law is submitted in support of the Motion for Summary Judgment which has been filed on behalf of the defendant Carraway Methodist Hospitals of Alabama, Inc., d.b.a. Winfield Carraway Hospital.

FACTS

Plaintiff Daisey Sanderson presented ambulatory to the emergency room of Winfield Carraway Hospital on December 3, 1988, at approximately 12:30 p.m., complaining of right hip and knee pain. Ricketts affidavit. She reported to resident physician Dr. Mark Ricketts that she had fallen six days earlier, and though

she continued to be able to walk, she was still having some pain. Ricketts affidavit. Dr. Ricketts examined her and ordered x-rays made of her right knee and right hip, and gave her medication for her pain. Ricketts affidavit. He saw nothing in his examination of Ms. Sanderson and her x-rays that warranted immediate admission of her to the hospital. Ricketts affidavit. Dr. Ricketts prescribed Tylenol 3 as needed for pain and bed rest for 48 hours, and directed her to return if her pain worsened and to see her personal physician for follow-up the next week. Ricketts affidavit. Ms. Sanderson was not unstable at the time of her discharge at 1:50 p.m. that same afternoon. Ricketts affidavit.

On December 5, 1988, plaintiff's x-rays were interpreted by Dr. Mark Roberts, a radiologist. According to Dr. Roberts, Ms. Sanderson's hip films indicated that she had sustained a subcapital right femoral neck fracture. Plaintiff was immediatley picked up by an ambulance and admitted to the hospital for hip replacement surgery, which was performed by Dr. V. R. Chandran on December 6, 1988.

Ms. Sanderson was admitted to Winfield Carraway on December 5, 1988 and was discharged on December 14, 1988. She incurred hospital charges in the amount of $12,174.00, which she agreed to pay in the event her insurance did not cover the charges. Spann affidavit. Ms. Sanderson paid $70.00 of the balance due, but, despite notices from Winfield Carraway that her balance was past due and owing, she failed and refused to pay the remaining balance. Spann affidavit.

The first of these two lawsuits was initiated in by the hospital to collect its fee for services rendered to Ms. Sanderson during her December 5-14, 1988, hospitalization. Ms. Sanderson then filed suit against the hospital and Dr. Chandran on August 13, 1990. These cases were consolidated on September 17, 1991 by the Honorable Judge Bobby Aderholt.

ARGUMENT

1. Winfield Carraway is entitled to summary judgment on Ms. Sanderson's claims against it.

Plaintiff's complaint and her amended complaint charge this defendant with (1) violation of COBRA for failure to stabilize the plaintiff prior to her discharge; (2) negligence in having a resident doctor staff the hospital's emergency room on the weekend, and (3) negligence in the resident doctor's interpretation on an X-ray at plaintiff's initial presentation to defendant's hospital. Each of these claims is without merit.

It is well-settled in Alabama that in medical malpractice actions, the plaintiff must establish by competent expert testimony the standard of care required to be met and the breach thereof by the defendant. *Dobbs v. Smith,* 514 So. 2d 871 (Ala. 1987); *Tuscaloosa Orthopedic Appliance Co. v. Wyatt,* 460 So. 2d 156 (Ala. 1984); *Holt v. Godsil,* 447 So. 2d 191 (Ala. 1984); *Gilbert v. Campbell,* 440 So. 2d 1048 (Ala. 1983); *Parrish v. Spink,* 284 Ala. 263, 224 So. 2d 621 (1969). Plaintiff's claim that the hospital breached the standard of care in having a resident doctor staff the hospital's emergency room on the weekend is completely unsupported by competent medical testimony or, for that matter, any admissible evidence. To the contrary, the only admissible evidence regarding this issue is the deposition testimony of Don Hatcher, Administrator of Winfield Carraway Hospital, who testified that it is the standard of practice in the community to have residents work in the hospital's emergency room:

> Q. On December the 3rd, 1988, according to what Dr. Jordon was saying, that Dr. Ricketts was a resident M.D., would you ordinarily have resident M. D.'s to read x-rays instead of radiologists?

> A. That's the standard of practice in the community, yes, ma'am.
>
> Q. You're saying that its the standard of practice in the community —
>
> A. Yes, ma'am.

Hatcher deposition, p. 49.

Plaintiff has presented no evidence that the defendant has violated the COBRA provisions relating to the discharge or transfer of emergency patients. Plaintiff apparently would charge that the defendant is in violation of COBRA by allegedly discharging Ms. Sanderson in an unstable condition or because it discharged her because she had no insurance when she presented to Winfield Carraway. Again, the only competent evidence on this point is the deposition testimony of Dr. Timothy Jordan:

> Q. . . . What about if a person came in, they didn't have insurance, into the emergency room? Is that a factor whether somebody is going to send them home?
>
> A. That has no factor in our treatment of patients at Winfield Carraway Hospital.

Jordan Deposition, p. 37. Nor was the plaintiff discharged in an unstable condition as alleged by the plaintiff. Ricketts affidavit. The plaintiff has wholly failed to present any evidence of any violation of COBRA on the part of this defendant.

The plaintiff has also presented no competent evidence on the issue of the resident doctor's alleged negligent interpretation of the plaintiff's X-ray. The affidavits of Dr. Mark Ricketts, M. D. submitted herewith, attests that nothing in Dr. Rickett's care and treatment of Ms. Sanderson was below the standard of care under the circumstances of this case.

Plaintiff has submitted no competent expert medical testimony with respect of any of the three issues raised in her complaint. Therefore, the defendant Winfield Carraway moves the Court to enter judgment in its favor on Ms. Sanderson's claim against this defendant.

II. Winfield Carraway is entitled to summary judgment on its claims against Ms. Sanderson.

On her admission to Winfield Carraway on December 5, 1988, Ms. Daisey Sanderson entered into a written agreement with Winfield Carraway to pay for hospital charges not covered by her insurance and specifically agreed to pay for services rendered to her by Winfield Carraway. Spann affidavit. A true and correct copy of that agreement is attached to the affidavit of Chuck Spann, Controller of Winfield Carraway, submitted herewith. Ms. Sanderson failed to pay as promised, and in Febraury, 1989, May, 1989, and September, 1989, Winfield Carraway sent to Ms. Sanderson notice that her hospital bill was past due and delinquent. Spann affidavit. Plaintiff breached her agreement to pay Winfield Carraway, and after application of all payments, to date owes Winfield Carraway $12, 104.00. Spann affidavit.

On or about September 21, 1989, plaintiff's account was referred to Winfield Carraway's attorneys for collection, and pursuant to Ms. Sanderson's agreement with the hospital of December 5, 1988, Winfield Carraway is due $4,039.67 in attorney's fees. Spann affidavit.

CONCLUSION

Wherefore, for the foregoing reasons, Winfield Carraway respectfully requests that the Court grant summary judgment on behalf of this defendant on the claims against it by the plaintiff in the above-styled actions, and on its behalf on its claims against the plaintiff in the above-styled actions, on the grounds that there are no genuine issues of material fact in these cases, this

defendant is entitled to judgment as a matter of law, and there is no just reason for delay.

/s/ Crawford S. McGivaren, Jr.
/s/ Melanie F. Merkle
/s/ Sara A. McGivaren
Attorneys for Defendant
Carraway Methodist Hospitals of
Alabama, Inc.
OF COUNSEL:
CABANISS, JOHNSTON,
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(205) 252-8800
OF COUNSEL:
4233 Wilderness Road
Birmingham, Alabama 35213
(205) 870-4921

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Memorandum in Support of Motion For Summary Judgment has been duly served upon Ms. Julia McCain Lampkin Asam, Suite 10, North View Plaza, 3120 Boulevard North, Northport, Alabama 35476, Attorney of record for the plaintiff, and upon Mr. Braxton Ashe of Almon, McAlister, Ashe, Baccus & Tanner, Post Office Box 899, Tuscumbia, Alabama 35674, and Mr. William S. Halsey, III, of Holt, Cooper & Upshaw, 529 Frank Nelson Building, 205 20th Street North, Birmingham, Alabama 35203, by depositing the same in the United States mail, postage prepaid and properly addressed this the 5th day of June, 1992.

/s/ Melanie Merkle
OF COUNSEL

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

CIVIL ACTION NO.
CV 90-187

CIVIL ACTION NO.
CV 90-106

DAISEY SANDERSON,
Plaintiff,
vs.
THE WINFIELD CARRAWAY HOSPITAL, INC., et al.,
Defendants.
and
WINFIELD CARRAWAY HOSPITAL,
Plaintiff,
vs.
DAISEY SANDERSON
Defendant.

AFFIDAVIT OF MARK RICKETTS, M.D.
STATE OF ALABAMA
COUNTY OF TUSCALOOSA

Before me, the undersigned authority, in and for said state and county, personally appeared Dr. Mark Ricketts, M. D., who, being by me first duly sworn, deposes and says as follows:

1. My name is Dr. Mark Ricketts, M.D. I am over the age of nineteen (19) years and I am in no way disqualified from making this affidavit, which is made from my personal knowledge.

2. I am a physician licensed to practice medicine in the State of Alabama and was licensed to practice medicine in the State of Alabama at all times relevant hereto.

3. I am familiar with the lawsuit filed on August 13, 1990, by Ms. Daisey Sanderson against Winfield Carraway Hospital.

4. In the course of my medical practice, I had occasion to provide medical care and treatment to Ms. Sanderson. At that time, although I was a licensed physician, I was still doing my residency and was not a specialist in either radiology or orthopedics. I have reviewed the medical records of that care and treatment, and I have an independent recollection of that care and treatment.

5. Ms. Sanderson presented to the emergency room of Winfield Carraway Hospital on December 3, 1988, at approximately 12:30 p.m. She was ambulatory, but complaining of right hip and knee pain. She reported to me that she had fallen six days earlier, and though she continued to be able to walk, she was still having some pain. I examined her and ordered x-rays made of her right knee and right hip, and for immediate relief, gave her medication for her pain. I saw nothing in my examination of her and her x-rays that warranted her immediate admission to the hospital. On discharge, I prescribed Tylenol 3 as needed for pain

and bed rest for 48 hours, and directed her to return if her pain worsened and to see her personal physician for follow-up the next week. She was not unstable at the time of her discharge at 1:50 p.m. that same afternoon. Later, as is routine, Ms. Sanderson's x-rays were reviewed and interpreted by a radiologist who observed that her right hip was fractured. It is for that very reason that films read by practitioners such as myself are subsequently read by radiologists, who by their training and experience can see fractures on x-ray films that the ordinary practitioner would not discern.

6. I am familiar with the degree of care, skill and diligence which reasonable competent physicians exercise in the practice of emergency room medicine in this general neighborhood under these circumstances both now and at all times relevant to the facts contained herein. At all times, my care and treatment, including my clinical examination and x-ray interpretation of Ms. Sanderson, met or exceeded the standard of care regularly exercised in similar situations in this general neighborhood by physicians under the same or similar circumstances.

7. I am familiar with the degree of care, skill and diligence normally had and exercised in the medical treatment and care of patients with problems such as were had by Ms. Sanderson both now and at all times relevant to the facts contained herein. At all times, the care and treatment of Ms. Sanderson by the hospital staff and nurses met or exceeded the standard of care regularly exercised in similar situations in this general neighborhood by hospital staff and nurses under the same or similar circumstances.

8. In my medical opinion and judgment, Ms. Sanderson suffered no injuries or damages as a result of any care or treatment rendered while she was a patient at Winfield Carraway Hospital and all the treatment and care she received was reasonable and necessary.

/s/ Mark Ricketts, M.D

SWORN TO AND SUBSCRIBED
before me this 4th day of
June, 1992.
/s/ Melanie Merkle
Notary Public
My Commission Expires: 10-18-94

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Affidavit has been duly served upon Ms. Julia McCain Lampkin Asam, Suite 10, North View Plaza, 3120 Boulevard North, Northport, Alabama 35476, attorney of record for the plaintiff, Mr. Braxton Ashe of Almon, McAlister, Ashe, Baccus & Tanner, Post Office Box 899, Tuscumbia, Alabama 35674, and Mr. William S. Halsey, III, of Holt, Cooper & Upshaw, 529 Frank Nelson Building, 205 20th Street North, Birmingham, Alabama 35203, by depositing the same in the United States mail, postage prepaid and properly addressed this the 5th day of June, 1992.

/s/ Crawford S. McGivaren, Jr.
OF COUNSEL

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

CIVIL ACTION NO.
CV 90-106

DAISEY SANDERSON,
Plaintiff,
vs.
THE WINFIELD CARRAWAY HOSPITAL, INC., et al.,
DEFENDANTS.
AND
WINFIELD CARRAWAY HOSPITAL,
Plaintiff,
vs.
DAISEY SANDERSON
Defendant.
CIVIL ACTION NO.
CV 90-187

AFFIDAVIT OF CHUCK SPANN
STATE OF ALABAMA
COUNTY OF MARION

Before me, a Notary Public in and for said County in said State, this date personally appeared Chuck Spann, known by me, who being first duly sworn, deposes and says as follows:

1. I am Chuck Spann, and I am the Controller of Winfield Carraway Hospital, Winfield, Alabama. ("Winfield Carraway")

2. On December 5, 1988, Ms. Daisey Sanderson entered into a written agreement with Winfield Carraway to pay for hospital charges not covered by her insurance and specifically agreed to

pay for services rendered to her by Winfield Carraway. A true and correct copy of that agreement is attached hereto. Ms. Sanderson has failed to pay as promised, and in February, 1989, May, 1989, and September, 1989, Winfield Carraway sent to Ms. Sanderson notice that her hospital bill was past due and delinquent.

3. Plaintiff is in breach of her agreement to pay Winfield Carraway, and, after application of all payments, to date owes Winfield Carraway $12, 104.00.

4. On or about September 21, 1989, plaintiff's account was referred to Winfield Carraway's attorneys for collection, and pursuant to Ms. Sanderson's agreement with the hospital of December 5, 1988, Winfield Carraway is due $4,039.67 in attorneys fees.

5. I am over the age of nineteen (19) years and I am in no way disqualified from making this affidavit, which is made from my personal knowledge or from knowledge derived from the files of Winfield Carraway Hospital in the regular course of business.

This the 4th day of June, 1992
/s/ Chuck Spann

Sworn to be and subscribed
before me this the
4th day of June, 1992
/s/ Mary Ann Franks
Notary Public
My commission expires:
March 2, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Affidavit has been served upon Ms. Julia McCain Lampkin Asam, Suite 10, North View Plaza, 3120 Boulevard North, Northport, Alabama 35476, attorney of record for the plaintiff, Mr. Braxton Ashe of Almon, McAlister, Ashe, Baccus & Tanner, Post Office Box 899, Tuscumbia, Alabama 35674, and William S. Halsey, III, of Holt, Cooper & Upshaw, 529 Frank Nelson Building, 205 20th Street North, Birmingham, Alabama 35203, by depositing the same in the United States mail, postage prepaid and properly addressed this the 5th day of June, 1992.

Melanie Merkle
OF COUNSEL

Rule 53

OPINIONS AND "NO OPINION" CASES OF THE SUPREME COURT AND THE COURT OF CIVIL APPEALS.

(a) Affirmance Without Opinion. The Supreme Court or the Court of Civil Appeals may affirm a judgment or order of a trial court without an opinion if the court determines:

(1) That an opinion in the case would serve no significant precedential purpose; and

(2) That one of the following circumstances exists:

(A) The judgment or order appealed from is based on findings of fact that are not clearly, plainly, or palpably erroneous;

(B) The evidence adequately supports the jury verdict on which the judgment or order is based;

(C) In a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings that would have been necessary to support the judgment or order;

(D) The order of an administrative agency is sufficiently supported by the evidence in the record;

(E) The appeal is from a summary judgment, a judgment on the pleadings, or a judgment based on a directed verdict, and that judgment is supported by the record; or

(F) The court, after a review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law.

(b) Designation of Category. When the Supreme Court or the Court of Civil Appeals affirms a judgment without an opinion it shall in its order of affirmance designate the case as a "No Opinion" case and in its order of affirmance it shall also cite section (a) (1) of this rule and that subpart of section (a) (2) relied upon by the court in its decision to write no opinion.

(c) Publication of Decisions. The reporter of decisions shall publish all opinions of the Supreme Court and the Court of Civil Appeals in the official reports of Alabama decisions, but the text of an order of affirmance in a "No Opinion" case shall not be published in the official reports. The "No Opinion" cases of each court shall be collected in a periodic "Table of Decisions Without Published Opinions," which shall be published in the official reports and which shall indicate the action taken in all "No Opinion" cases. However, if in a "No Opinion" case a Justice or Judge writes a special opinion, either concurring with or dissenting from the action of the court, the reporter of decisions shall publish that special opinion, along with a statement indication the action to which the special opinion is addressed.

(d) Unpublished Decisions Not Precedent. Orders of judgments of the Supreme Court and the Court of Civil Appeals not published in the official reports have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrines of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar.

(e) Time of Publication. An opinion of the Supreme Court shall not be published while an application for

rehearing is pending, and an opinion of the Court of Civil Appeals shall not be published while an application for rehearing is pending or while a petition for certiorari review is pending the Supreme Court. However, the delay in publication caused by this provision shall not affect the precedential value of an opinion.

(Rule 53 adopted effective January 1, 1993.)